

Memorandum 72-64

Subject: Study 36.80 - Condemnation Law and Procedure (Jurisdiction of Public Utilities Commission)

Summary

At the September 1972 meeting, the Commission requested the staff to procure information about the jurisdiction of the Public Utilities Commission over problems relating to the relocation of utility property in eminent domain proceedings. This jurisdictional matter arises primarily in two contexts--see Memorandum 72-66 (P.U.C. jurisdiction over relocation of utility property by certain special districts pursuant to substitute condemnation) and Memorandum 72-65 (repeal of Code of Civil Procedure Section 1247a, which provides court jurisdiction over relocation and removal of structures pursuant to condemnation for joint and more necessary uses). This memorandum discusses P.U.C. jurisdiction over relocation in eminent domain generally and concludes that the extent of such jurisdiction is simply unclear. The staff recommends the enactment of a provision that would preserve the P.U.C. jurisdiction to the extent it exists in order to allay objections from the P.U.C. itself, which appears to be quite jealous of its jurisdiction.

Analysis

We have contacted the legal staff of the P.U.C. They take the position that Public Utilities Code Section 851 grants the P.U.C. jurisdiction over all matters related to the transfer and placement of public utility property. Section 851 reads in pertinent part:

851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line,

plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. . . .

It is their opinion that this provision for P.U.C. approval not only applies to relocation of utility property, but also that it supersedes anything that may be found in the eminent domain laws implying that the court has jurisdiction over the relocation of utility property. Their interpretation of supersession is based on the fact that the Public Utility Act is a later enactment than the eminent domain law and that the jurisdiction of the P.U.C. is constitutionally protected by Article XII, Sections 22 and 23, of the California Constitution (P.U.C. power to regulate and control utilities overrides conflicting local laws; legislative authority to confer jurisdiction on P.U.C. is "plenary"). The P.U.C.'s legal staff further states that it is the practice when a public entity seeks the relocation of property of a public utility that the entity and utility work out an agreement and submit the agreement to the P.U.C. for approval. These rules and practices apply to all public utilities, not merely railroads. To their knowledge, there has never been a case where a court has ordered a relocation and the P.U.C. has refused to permit such relocation; if such a case should arise, it is their opinion that the P.U.C. would prevail.

Whether their interpretation of the law is completely accurate is open to question. While it is clear from P.U.C. decisions that the P.U.C. strives to assert maximum control over issues in eminent domain proceedings involving utility property, there is at least one case holding that, where there is a whole taking of utility property (not a relocation), the right of eminent

domain is superior to the jurisdiction of the P.U.C. In People v. City of Fresno, 254 Cal. App.2d 76, 62 Cal. Rptr. 79 (1967), the city had agreed to purchase a water system owned by a public utility. The agreement was submitted to the P.U.C. for approval pursuant to Section 851, and the commission approved the sale subject to certain conditions. Rather than accept the conditions, the city condemned the public utility property. The P.U.C. brought an action to set aside the final judgment of condemnation. The court of appeal held that the approval provisions of Section 851 do not restrict the superior right of eminent domain.

It is arguable that, since the Fresno case involved a whole taking of a public utility system, the case should not apply to a relocation. The P.U.C. has no legitimate interest in a whole taking whereas, in a relocation, it must be able to ascertain technical aspects of the continued operation of the utility. This argument is partially bolstered by the decision in Northwestern Pac. R.R. v. Superior Court, 34 Cal.2d 454, 211 P.2d 571 (1949), holding that the relocation or removal of railroad tracks by a city in eminent domain was subject to P.U.C. approval. However, this case involved a railroad crossing, a matter specifically provided for by statute, and did not necessarily apply to public utility property generally. In fact, it was distinguished on this ground in the Fresno case.

What can we conclude from all this? To the staff, it appears that the power of the P.U.C. is not so broad as the P.U.C. likes to think it is with regard to relocation of utility property. However, it also appears that any attempt to codify any rules that might be interpreted to expand court power or contract P.U.C. power is likely to meet with opposition from the P.U.C. if from no one else. The staff believes the best way out of this dilemma is to incorporate in the Eminent Domain Law a provision that preserves

whatever jurisdiction in eminent domain the P.U.C. may have. It should be noted that the P.U.C. clearly has jurisdiction over some matters other than relocation, e.g., just compensation following petition by a local public entity. A draft provision with Comment is attached as Exhibit I.

Respectfully submitted,

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EXHIBIT I

§ 1260.000. Public Utilities Commission jurisdiction preserved

1260.000. Nothing in this title affects any other statute granting jurisdiction over any issue in eminent domain proceedings to the Public Utilities Commission.

Comment. Section 1260.000 preserves such jurisdiction as the Public Utilities Commission may have over issues in eminent domain proceedings. For example, the Public Utilities Commission has concurrent jurisdiction over certain eminent domain proceedings. See, e.g., Pub. Util. Code § 1401 et seq. (local public entities may petition Public Utilities Commission to acquire public utility property by eminent domain) and Pub. Util. Code § 1351 (Public Utilities Commission may ascertain value of public utility property in such proceeding). Cf. Cal. Const., Art. XII, § 23a (legislative power to provide Public Utility Commission jurisdiction to ascertain just compensation). Section 1260.000 supersedes the portion of former Section 1243 of the Code of Civil Procedure which provided that the jurisdiction of the Public Utilities Commission to ascertain just compensation was not affected by eminent domain law.

The Public Utilities Commission has exclusive jurisdiction over railroad crossings. See, e.g., Pub. Util. Code § 1201 et seq. and Northwestern Pac. R.R. v. Superior Court, 34 Cal. 2d 454, 211 P.2d 571 (1949) (Public Utilities Commission jurisdiction over crossings extends to eminent domain proceedings in Superior Court); cf. Cal. Const., Art. XII, § 23 (legislative power to provide Public Utilities Commission control of public utilities) and Pub. Util. Code § 7537 (farm and private crossings). In addition, there may be

specific grants of jurisdiction to the Public Utilities Commission over certain issues involved in particular eminent domain acquisitions. See, e.g., Pub. Util. Code §§ 861 (Public Utilities Commission jurisdiction over controversies concerning relocation of utility improvements), 30503 (Public Utilities Commission review of acquisition of railroad property by Southern California Rapid Transit District), and 102243 (Public Utilities Commission jurisdiction in proceedings of Sacramento Regional Transit District). Whether the Public Utilities Commission has jurisdiction over the place and manner of relocation of utility property generally is not clear. Compare Pub. Util. Code § 851 (Public Utility Commission approval required before utility property may be disposed of) with People v. City of Fresno, 254 Cal. App.2d 76, 62 Cal. Rptr. 79 (1967)(Section 851 not applicable in condemnation of public utility property).